



STATE OF MONTANA DEPARTMENT OF REVENUE JOB PROFILE

Working Title

Tax Counsel

Job Code Title

Lawyer

Pay Band

07

Job Code Number

231117

Director's Office

Legal Services Office

Litigation Unit

Fair Labor Standards Act

Exempt

The Montana Department of Revenue administers more than 30 state taxes and fees; establishes values for taxable property, including agricultural land, residential real estate, commercial real estate, forest land, business equipment, railroads and public utilities; supervises the operation of the state liquor stores and agencies and administers the laws governing the sale, taxation, and licensing of alcoholic beverages; and returns unclaimed property to its rightful owners.

The Director's Office supports the agency's Director and is composed of five work units: Legal Services Office; Office of Tax Policy and Research; Office of Human Resources and Organizational Development; Office of Taxpayer Assistance; and the Executive Office. The Legal Services Office provides complete legal services to all divisions and the Director's Office, representing the department and the State of Montana before administrative boards and in state and federal courts in all litigation involving Montana taxes and liquor laws. The office also handles all administrative rule, disclosure, and dispute resolution matters for the department. The Legal Services Office is comprised of the Litigation Unit, the Regulatory Unit, and the Office of Dispute Resolution.

Job Responsibilities

The Tax Counsel handles routine civil litigation in state district court and on appeal. These cases often involve complex fact patterns and/or constitutional challenges to state statutes or may involve more routine matters. The incumbent will serve as an administrative hearings examiner; provide legal advice to client agencies; draft rules and legislation on behalf of clients; and may also work on complex litigation under the supervision of senior staff. The position reports to the Chief Legal Counsel and does not supervise other staff.

- **Case Development and Presentation 65%**

Represents the department before the courts of Montana and the United States and before state and county tax appeal boards and administrative agencies. Such representation includes all aspects of litigation which the lawyer is solely responsible for performing with assistance from other team members as requested. Decisions impact future cases and may set precedent. The tax counsel is independently responsible for keeping the chief legal counsel and the division fully informed of all aspects of the litigation.

1. Analyzes and evaluates facts and information from case files to gain understanding of each case, evaluate the strength of the state's legal position, and develop cases. Coordinates and oversees paralegals. Conducts follow-up factual investigation such as interviews and gathering additional documentary evidence as necessary.

2. Conducts oral depositions and effectively uses all other discovery tools including requests for admission, interrogatories, and requests for production. Interviews all of the department's technical and expert witnesses, selects and interviews technical and expert witnesses from outside the agency, and evaluates witness testimony.
3. Prepares and manages documentary and other evidence to ensure compliance with federal and state laws, rules, and regulations. Selects, interviews, and prepares technical and expert witnesses.
4. Conducts mediations and settlement conferences to negotiate resolutions to legal disputes. Independently evaluates the department's prospects for success and the potential impact of success or failure on future tax collections and tax administration in Montana to determine a course of action. The incumbent is responsible for coordinating the interests and efforts of numerous jurisdictional entities and parties including state, county, city, school districts, and multi-state corporations.
5. Prepares pleadings. Conducts legal research. Drafts motions, responsive pleadings, briefs, and other written presentations. Develops case analyses and evaluation memoranda for clients. Prepares case-related correspondence. Prepares settlement memos and brochures. Reviews the district court record and drafts the state's brief on appeal to the Montana Supreme Court.
6. Appears and argues pre-trial motions. Presents the case to the court or jury including voir dire, opening statements, questioning of lay and expert witnesses, cross-examination of witnesses, closing arguments, submittal of jury instructions, and final jury arguments.
7. Appears and argues in the Montana Supreme Court in cases set for oral argument. Provides clear, concise, polite, and persuasive presentations and responses to questions from the Court.

- **Client Counseling and Advocacy 15%**

Advises agency clients on legal matters relating to diverse subjects, including but not limited to student loan defaults, election law and campaign practices, environmental quality laws, petroleum tank releases, contracts, personnel matters, ethics, open meetings, and other open government laws.

1. Conducts legal research and drafts legal memoranda and reports for issuance as opinions to client agencies. Drafts administrative rules, regulations, legislation, and related documents such as fact sheets. The research will include all legal issues affecting the department including tax law, administrative law and procedure, and alcohol and tobacco law.
2. Analyzes, evaluates, and interprets tax laws and other statutes affecting the agency and issues written opinions on these laws. These include complex laws that may have no prior interpretations of the law or applicable precedents for interpretation.
3. Provides legal advice and guidance to the director, deputy director, and division administrators on complex and technical taxation issues; chief legal counsel and director on litigation strategy; and other agency staff on issues related to personnel, contracts, and other legal issues as directed by the chief legal counsel.
4. Provides regular and consistent legal advice to client agencies on various legal issues. This may involve specialized research and analysis of statutory and case law as well as evaluation of legal trends and judicial policies to provide sound legal counsel.
5. Presents oral testimony in favor of proposed legislation or administrative rules. May appear and argue motions in federal and state district courts. May try cases with relatively lower levels of complexity or potential exposure and assist with trial of more complex or higher exposure cases.

- **Administrative Rule and Statutory Analysis 15%**

1. Reviews proposed administrative rules to determine whether rules are consistent with legislative intent, properly implement statutes, and whether the department has statutory authority to adopt the proposed regulations. Prepares, evaluates, and interprets proposed legislation for the department as requested.
2. Consults with director, division administrators, and chief legal counsel regarding need for and basic purpose of administrative rules.

3. Represents the department at rules hearings.
4. Reviews the final department action on the rules to insure compliance with the Montana Administrative Procedure Act (MAPA).
5. Drafts legislation upon request of chief legal counsel and/or the director, deputy director, and division administrators.
6. Reviews proposed legislation drafted by department personnel and legislators. Recommends and drafts amendments to proposed legislation.
7. Appears before legislative standing and interim committees to explain and clarify proposed legislation when requested.
8. Alerts the chief legal counsel and/or director, deputy director, and division administrators to problems with existing laws and proposes possible changes.

- **Other Duties as Assigned 5%**

1. Performs a variety of other duties as assigned by the supervisor.

Job Requirements

To perform successfully as a tax counsel, the incumbent must be self-motivated; possess a strong work ethic; maintain a positive attitude; and enjoy working with, and for, the public. It is essential that the incumbent has the ability to analyze situations and make decisions. Skills in legal research, methods, and strategy; multi-tasking; paying attention to details and accuracy; managing multiple priorities under tight deadlines; communicating effectively through writing, public speaking and editing; and word processing, spreadsheet, and database applications are required. The incumbent is required to conduct analyses and foresee potential problems; determining the best course of action; analyze complex issues; identify others' underlying concerns and motives; negotiate; deal with controversy and hostility in a professional and objective manner; and establish effective relationships with others. This position works with highly confidential financial and tax information and is required to maintain the highest level of confidentiality regarding all information acquired or used in performing this job.

This position requires knowledge of Montana tax law and tax cases; court and hearing rules and procedures including the Federal Rules of Civil Procedure, the Montana Rules of Civil Procedure, the Rules of Appellate procedure, the Rules of Evidence, the Uniform District Court Rules, the Montana Administrative Procedure Act; court rules and trial procedures including the rules of evidence; judicial processes and procedures relative to administrative hearings and state and federal courts; bill drafting and legislation; civil litigation techniques and trial strategies; appellate court argument procedures and techniques; the Constitutions of Montana and the United States; and legal research methods and procedures. The position also requires knowledge of state and federal laws, case law, court rulings, constitutional provisions, and basic principles, practices, and terminology relative to the assigned areas and working knowledge of the operations of state government and administrative procedures.

- The minimum level of education and job-related work experience needed as a new employee **on the first day** of work is completion of a juris doctorate degree from an accredited law school. Must be licensed to practice law in the state of Montana.
 - Work experience with state tax litigation is preferable. Experience in civil litigation outside of tax litigation may substitute for tax litigation depending on the type and extent of the experience.
 - Other combinations of education and experience will be evaluated on an individual basis.

Department Core Values

- **Respect:** As a representative of the people of Montana, proceeds with the highest level of respect for the dignity of every person contacted through work. Without exception, all people are treated as equally as possible. The employee is a faithful steward of the resources provided to this agency by the citizens of Montana.
- **Integrity:** Conducts work honestly and makes decisions that establish a clear record that the department serves the public with integrity. Apologizes for mistakes and gives credit to others for their cooperation, work, and ideas in achieving positive results. Accountable for their actions and

holds others accountable for theirs. Decisions and judgments achieve equity and justice for all parties involved including citizens and co-workers.

- **Productivity:** Consistently strives to minimize the waste of the department's financial, facilities, and human resources. Diligently works to improve the productivity and effectiveness of the work unit. Welcomes and encourages new ideas on improving the results of the department from the public, other officials, colleagues, and supervisors. Approaches work in a manner that builds goodwill, trust, and cooperation internally with other staff and externally with the public.
- **Teamwork:** Maximizes cooperation and teamwork when working with other employees, divisions, and other state agencies. Willing to work with others for the opportunity to learn from their ideas, talents, and knowledge. Seeks to resolve conflicts with other employees and work units in an open and respectful manner that reinforces teamwork. Celebrates the successes of others.

Working Conditions

This position has periods of high stress, often weeks at a time, due to critical projects with statutory deadlines, managing a heavy workload, the technical nature of the work, significance of decisions made, the challenging nature of contacts, controversial or adversarial situations, and conflicting priorities. As a Department of Revenue employee, the incumbent may come into contact with highly confidential financial and tax information and is required to maintain the highest level of confidentiality regarding all information acquired or used in performing this job. Work hours routinely exceed 40 hours per week. Minimal travel may be required some which will be out-of-state. A valid Montana driver's license is required. This position requires considerable computer and keyboard use. The incumbent may spend considerable time on the phone. Lifting is infrequent, less than 15 pounds and includes carrying light items such as papers and books. This job requires regular attendance as scheduled by the supervisor. This job cannot be performed at an alternate work site.

Special requirements

- **Background Examination:** Applicants for this position will be subject to a criminal background review before being considered for employment. Individual circumstances involving a criminal conviction will be reviewed to determine an applicant's eligibility for employment.
- **Compliance with All Appropriate Montana Tax Laws:** An employee's tax status must be current.

This job profile was produced by the Office of Human Resources in conjunction with the appropriate managers.

Division Administrator Review: The statements in this job profile are accurate and complete.

Signature: C.A. Daw, Chief Legal Counsel Date: August 2010

Human Resource Director Review: The Office of Human Resources has reviewed this job profile.

Signature: JeanAnn Scheuer, Human Resources Director Date: August 2010

Employee: My signature below indicates I have read this job profile and discussed it with my supervisor.

Signature: _____ Date: _____

Name (print): _____